III. SWBT's Pre-ordering and Ordering Systems Are Not at Parity With Those Supporting CLEC Orders

18. On a going-forward basis, SWBT will continue to discriminate against Rhythms and other CLECs offering DSL-based services. SWBT is modifying its OSS for its retail DSL service to give itself preferential treatment in loop assignment, ordering, and provisioning intervals, compared to its processing of CLEC orders for DSL-capable UNE loops. I cannot provide additional details regarding SWBT's OSS modifications because this information was provided during Rhythms' arbitration with SWBT, and SWBT has unreasonably insisted that the information remain confidential. Thus, this information cannot be used in any other proceeding at the Commission unless SWBT is required to provide it.

19. SWBT's OSS will not be in parity until SWBT provides the same level and degree of mechanization and flow-through capabilities for CLEC orders, regardless of DSL type, as SWBT gives its own retail operations. That is, SWBT should be required to support all types of DSL, such as SDSL and IDSL, to the same degree as it supports its chosen version of ADSL.

20. SWBT is well into the process of implementing the "scaling" of its retail ADSL service to very high deployment rates. SWBT's ordering and provisioning for CLECs cannot be at parity until it can "scale" CLEC DSL-capable loop orders at the same rates of deployment as it supports at retail.

IV. SWBT's Provisioning Process Is Delaying Rhythms' Market Entry

21. SWBT has placed conditions in its OSS that unfairly restrict the ability of CLECs to provision quickly the UNE loops needed to provide DSL-based service. SWBT will not accept orders that ask for a loop to be provisioned in less than 12 business days. Rhythms has had orders rejected because it asked for provisioning intervals shorter than 12 business days. This practice violates the spirit, if not the letter, of SWBT's Interim Agreement with Rhythms. That Interim Agreement provides for a loop qualification interval of 3-5 business days and a provisioning interval of 5-7 business days. Thus, the *maximum* total provisioning interval under the Interim Agreement is twelve business days. Rather than recognizing and abiding by this maximum interval, SWBT is treating it as a *minimum* interval, and is rejecting any order with a requested provisioning date of less than twelve business days from the date of order.

22. Some of Rhythms' orders have not been provisioned when requested, even when Rhythms specifies a date that is 12 or more business days from order date. For examples of this problem, see the confidential matrix documenting Rhythms orders. (Matrix of Rhythms' DSL-capable loop orders has been separately provided to the Staff under seal).

23. It should not come as any surprise that SWBT routinely has the capability to provision its retail ADSL service faster than it provisions CLEC DSL-capable loop requests, because SWBT's retail ADSL service is provisioned on loops that are currently used to provide POTS to an end user. This structural disparity is not merely hypothetical: Rhythms has already had at least one customer cancel an order specifically because it took too long for SWBT to provide the loop.

24. SWBT's discriminatory support of its own retail ADSL rollout plans has seriously harmed Rhythms' ability to offer DSL-based services in areas other than those selected by SWBT for deployment. If Rhythms wants to offer DSL-based services from a central office where SWBT is not planning to offer ADSL, SWBT requires 42 business days (58 calendar days, which is nearly two months) to provision a loop. Due to this extremely long provisioning interval, Rhythms has been discouraged from attempting to provide service from any central office that SWBT has not selected for deployment of its own retail ADSL.

25. SWBT's lack of responsiveness and cooperation extends even to the point at which they have completed their provisioning. Despite several requests from Rhythms, SWBT has refused to inform Rhythms when SWBT's provisioning is complete and the loop is ready to be turned over to Rhythms so it can begin providing service to its customers. SWBT's refusal to notify Rhythms has created additional delay. Rather than attempting to find a solution to this problem, some SWBT personnel have treated the issue in a cavalier manner. Indeed, one SWBT employee told Rhythms "if this were a perfect world, SWBT would have to notify Rhythms, but this isn't a perfect world." In my experience, expecting a company to fulfill its legal obligations is a minimum threshold, which is a long way from perfection.

26. Rhythms has also encountered a serious SWBT provisioning problem very recently. Rhythms is attempting to deploy in Texas the same IDSL service it has successfully deployed in other SBC states, such as California, as well as in other states across the country. Rhythms' IDSL equipment complies fully with all IDSL and ISDN national standards and specifications. Rhythms recently discovered that SWBT has configured its network in a way

that prevents Rhythms IDSL equipment from working. Rhythms has brought this problem to the attention of SWBT several times, but SWBT has refused even to discuss the issue.

V. SWBT's Interpretation and Implementation of the Interim Agreement Has Created Obstacles and Slowed Rhythms' Market Entry

27. Rhythms' entry into the DSL market was substantially and directly delayed by SWBT's anticompetitive conduct. SWBT was unwilling to negotiate an interconnection agreement with fair and reasonable terms, thereby forcing Rhythms to arbitrate DSL issues before the Commission. Rhythms submitted its initial request to negotiate an interconnection agreement with SWBT in early June 1998. After months of negotiating with SWBT, Rhythms determined that no significant progress could be made through negotiation on DSL issues, and filed a petition to arbitrate on December 11, 1999. Because Rhythms was forced to arbitrate an interconnection agreement with SWBT, it was not able to place any orders for UNE loops until fourteen months after it had first requested interconnection with SWBT.

28. On April 26, 1999, as a means to make up for the substantial delays created by SWBT, the Arbitrators ordered SWBT to meet a specific schedule by which Rhythms' existing orders for collocation would be filled. As the Commission is aware, Rhythms must order collocation, SWBT must prepare the collocation space, and Rhythms must install its equipment in the collocation space before Rhythms can even begin to order DSL-capable loops.

29. SWBT caused further delay by appealing the Arbitrators' Order No. 5 on May 11, 1999. SWBT finally withdrew the appeal and Rhythms began working with SWBT on the fulfillment of its collocation orders.

30. Meanwhile, SWBT rolled out its retail ADSL service in January, 1999. Furthermore, SWBT recently "negotiated" a final and complete interconnection agreement with SBC's newly formed advanced services subsidiary only thirty days after the company was incorporated. Rhythms, on the other hand, has been attempting to obtain a fair and reasonable interconnection agreement for eighteen months.

31. Now that SWBT must comply with the Interim Agreement with Rhythms, SWBT has taken an inflexible and extremely narrow interpretation of that Agreement, resulting in substantial difficulties that have delayed Rhythms' market entry. The Interim Agreement is intended merely to allow Rhythms to take the preliminary steps necessary to begin ordering DSL loops. It does not cover all terms and conditions that a final Interconnection Agreement would include. Thus, Rhythms must depend on SWBT's cooperation and good faith efforts to make the interim agreement useful. Rather than cooperate, however, SWBT personnel have indicated they will not do anything to assist Rhythms in provisioning loops that isn't expressly required by the Interim Agreement. For example, SWBT will not perform loop acceptance testing, nor will SWBT provide a coordinated MPOE meet to troubleshoot problems. Both of these operational necessities are routinely performed in a cooperative manner by other ILECs.

VI. SWBT's Refusal to Allow Line Sharing Discriminates Against Rhythms and Delays Rhythms' Market Entry

32. Despite the fact that SWBT provides its own retail ADSL service by sharing an existing POTS loop, SWBT continues to refuse to provide line sharing to Rhythms. Rhythms most

recently requested line sharing in a letter to SWBT dated October 21, 1999. (Letter from Eric Geis to John Stankey, attached as Exhibit 1). In response, SWBT refused to offer line sharing on the same terms as SWBT provides to its own operations, instead offering only an inferior "surrogate" for line sharing that uses a separate loop. (Letter from John Stankey to Eric Geis dated October 28, 1999, attached as Exhibit 2).

33. The FCC has recognized the importance of line sharing in a decision announced November 18, 1999. Over ILECs' objections, including SBC's, the FCC has mandated that SBC and other ILECs offer line sharing quickly, citing the numerous deficiencies in the ILECs' position on the issue and the consumer benefits from line sharing.

34. As long as SWBT continues to refuse to allow CLECs to share POTS loops for the provisioning of DSL services, SWBT will necessarily maintain a significant advantage over CLECs, in terms of both cost and consumer acceptance.

VII. Additional Testing of SWBT's OSS is Needed

35. Based on Rhythms' difficulties in placing orders and provisioning loops, and SWBT's inability and unwillingness to correct these problems quickly, more testing of SWBT's OSS system is needed. Rhythms' experience demonstrates that Telcordia's study projecting that SWBT's OSS would meet CLECs' needs was too optimistic, and the study's conclusions have now been proven to be unsupported with respect to DSL-capable loops.

36. Rhythms was not able to participate in Telcordia's testing because Rhythms was in the midst of arbitrating with SWBT for an interconnection agreement, and therefore was not in a position to place any UNE loop orders. Rhythms notified the Commission one month ago

that it wished to participate in OSS testing with Telcordia now that it is able to place UNE loops orders under its Interim Agreement with SWBT. Rhythms continues to stand ready to participate in any OSS testing or monitoring the Commission may order.

37. Given the conflicting evidence concerning the adequacy of SWBT's OSS, the Commission cannot fairly conclude that SWBT's OSS meet the requirements of Section 271 of the FTA at this time.

Eric H. Geis
Vice President, National Deployment
and Secretary and Treasurer
Rhythms Links Inc.

SWORN AND SUBSCRIBED before me on this 22nd day of November, 1999.

Notary Public In and For
the State of Colorado

My Commission expires: 7.31.2000

EXHIBIT NO. 1

RHYTHMS

October 21, 1999

VIA FACSIMILE AND U.S. MAIL
Mr. John T. Stankey
Vice President Industry Marketing
SBC Telecommunications, Inc.
370 Third Street, Room 714
San Francisco, California 94107

Re: Request for Line Sharing

Dear Mr. Stankey,

This letter is a formal request that Southwestern Bell Telephone Company ("SWBT") agree to offer line sharing to Rhythms Links, Inc. ("Rhythms") immediately in Texas. As you know, we are currently arbitrating an interconnection agreement with SWBT in Texas.

Based on SWBT's recent statements to the financial community that it will shortly begin offering line sharing, we assume our request will be promptly honored in all three states. To expedite this request, Rhythms wishes to make clear that it is seeking a line sharing arrangement that will put it in exactly the same position as SWBT's own retail ADSL operations.[1] That is, Rhythms wishes to share the frequency spectrum on a customer's existing loop so that Rhythms' ADSL/RADSL services run on the same copper loop that carries the customer's POTS voice traffic delivered by SWBT. Because SWBT is allowing its retail ADSL operations to use the same copper loop used to provide POTS service without an additional charge for such "add-on" ADSL service, Rhythms expects the same treatment.[2]

Please respond to this request as soon as possible, but no later than October 28, 1999. Should you have any questions regarding this request, please do not hesitate to

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[1] In an official network disclosure on its website, SWBT indicated it will deploy ADSL in Arkansas, Kansas, Missouri, Oklahoma and Texas on customers' existing loops such that "data is transported over an existing telephone line (i.e., a twisted copper pair) with no effect on delivery of normal voice calls." Network Notification No. SW1998009, Issue 3 (Attachment A).

[2] Let me also make it clear that I am not using the term "line sharing" in this letter to mean "surrogate" line sharing of the type mentioned in the FCC's Order of October 6, 1999, which promulgated conditions under which SWBT's parent, Southwestern Bell Corp., would be allowed to merge with Ameritech.

Rhythms Links Inc. · 6933 So. Revere Parkway Englewood, CO 80112-3931
Tel: 303.476.4200 · Fax: 303.476.4201 · www.rhythms.com

contact me on the above telephone number. We look forward to executing an agreement implementing line sharing in the very near future.

Sincerely,

Eric H. Geis

Enclosures

xc: Stephen P. Bowen

ATTACHMENT A

Public Affairs

SOUTHWESTERN BELL TELEPHONE (SWBT) COMPANY

Network Notification No. SW1998009, Issue 3

Asymmetrical Digital Subscriber Line (DSL)

SWBT plans to deploy DSL in Arkansas, Kansas, Missouri, Oklahoma and Texas to address customer demands for bandwidth to obtain, for example, faster Internet access. DSL, envisioned primarily for Internet and telecommuting applications, will provide customers with network access at bit rates as high as 1.544Mbps (see below). Data is transported over an existing telephone line (i.e., a twisted copper pair) with no effect on delivery of normal telephone calls. DSL will be available from SWBT following regulatory approval.

Due to technology and facility constraints such as loop length, loop make-up, and spectral interference factors; DSL will not be available to all customers served by those central offices which are DSL-equipped. To be eligible technically for DSL, customers must be located within 17,500 feet of the office and their lines must meet certain transmission criteria. In addition, DSL requires a Digital Subscriber Line (DSL) modem, customer premises equipment (CPE), that is compatible with telephone company equipment. DSL will be offered in the central offices listed below using the Alcatel 1000 ATM Subscriber Line Access Multiplexer.

DSL will be available in the following packages:

- 128Kbps Upstream to the Network, 384Kbps to 1.544Mbps Downstream from the Network
- 384Kbps Upstream to the Network, 1.544Mbps to 6Mbps Downstream from the Network

References:

Technical Publication 76730

For more information, contact:
Manager-Information Release & Services
Southwestern Bell Telephone
530 McCullough, Room 2-E-02
San Antonio, TX 78215
210-886-1192

Reason for Reissue:

Issue 3: reissued to correct the offering from three packages to two packages, to correct the date of availability, and to clarify that DSL will be available in additional metropolitan areas at a later date.

Contact Personnel:
Your Southwestern Bell Account or ICSC Representative

or

Lee Culver
530 McCullough
Room 6-L-03
San Antonio, TX 78215
210-886-2172
lc1919@sbc.com

Tom Maxwell
530 McCullough
Room 7-C-02
San Antonio, TX 78215
210-886-2286
tm7152@sbc.com

Location of Change:
Initial deployment of DSL for a technology/service trial was made in Austin, Texas, during the third quarter of 1997. SWBT plans to offer DSL in the five (5) trial offices plus an additional five (5) Austin offices, in January 1999.

Location of Change:			**Date of Planned Change:**
CLLI Code	**City/ Central Office**	**State**	**Implementation Date**
AUSTTXFADS0	Austin Fairfax	TX	Week of January 29, 1999 -trial equipment already installed
AUSTTXFIDS0	Austin Fireside	TX	Week of January 29, 1999 -trial equipment already installed
AUSTTXGRDS0	Austin Greenwood	TX	Week of January 29, 1999 -trial equipment already installed
AUSTTXHOCG0	Austin Homestead	TX	Week of January 29, 1999 -trial equipment already installed
AUSTTXHODS0	Austin Homestead	TX	Week of January 29, 1999 -trial equipment already installed
AUSTTXJODS0	Austin Jollyville	TX	Week of January 29, 1999
AUSTTXLWRS0	Austin Lakeway	TX	Week of January 29, 1999
AUSTTXPFDS0	Austin Pflugerville	TX	Week of January 29, 1999
AUSTTXRRDS0	Austin Round Rock	TX	Week of January 29, 1999
AUSTTXTEDS0	Austin Tennyson	TX	Week of January 29, 1999

SWBT plans to offer DSL at a later date in the following metropolitan areas:

Little Rock, AR
Kansas City, KS
Topeka, KS

Wichita, KS
Kansas City, MO
St. Louis, MO
Oklahoma City, OK
Tulsa, OK
Austin, TX
Beaumont, TX
Dallas, TX
El Paso, TX
Fort Worth, TX
Houston, TX
Lubbock, TX
San Antonio, TX

EXHIBIT NO. 2

John T. Stankey
Vice President
Industry Markets

SBC Telecommunications, Inc.
570 Third Street, Room 714
San Francisco, California 94107
Phone 415 542-4300
Fax 415 541-0885

SBC

October 28, 1999

Advance Copy Via Facsimile.
Original Letter To Follow Via U.S. Mail.

Mr. Eric H. Geis
Vice President-National Deployment
Rhythms Links Inc.
6933 South Revere Parkway
Englewood, Colorado 80112-3931

Request for Line Sharing

Dear Eric:

This is in response to your October 21, 1999 letter demanding a response to ACI's request for SWBT to immediately provide line sharing to Rhythms in Texas by October 28, 1999. We also note that your letter indicated that it was sent via facsimile and via U.S. Mail. In fact, we did not receive such letter via either method. Instead, such letter was sent via Federal Express and was not received by SWBT until October 27, 1999.

As I am sure you are aware, the FCC currently has pending a Further Notice of Proposed Rulemaking in which it is considering whether "line sharing" between two different providers should be required.[1] Until such a decision is rendered, our position remains that we should not be compelled to share lines with our competitors pending resolution of operational issues that arise as a result of such sharing. At least one state agency regulating SBC's telephone subsidiaries has expressly upheld SBC's position that line sharing should not be required.

Also, FCC Rule 51.309, adopted by the FCC in its First Report and Order, remains in effect and will continue to govern the use of unbundled network elements. That Rule expressly provides: "(c) [a] telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility...."[2] Therefore, mandatory line sharing would be contrary to the governing rules.

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[1] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), Paragraph 92-107 (Advanced Services NPRM).

[2] *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket Nos. 96-98 and 05-185, FCC 06-325 (rel. August 8, 1996) (First Report and Order), Appendix B "Final Rules" at B-17. *See also* Paragraph 385, First Report and Order.

In any event, pursuant to the SBC/Ameritech Merger Conditions, recently approved by the FCC[3], SBC/Ameritech has committed to provide "virtual" line sharing until line sharing is found to be technically feasible by the FCC, placing Rhythms in the same economic position as though it were actually line sharing. Those Merger Conditions, which were approved by the FCC, state that SBC/Ameritech may provide Interim Line Sharing to a separate Advanced Services Affiliate on an *exclusive* basis pursuant to the terms and conditions set forth in such Conditions. However, where the SBC/Ameritech incumbent LEC provides Interim Line Sharing to a separate Advanced Services Affiliate, the incumbent LEC will charge unaffiliated providers of Advanced Services the Surrogate Line Sharing charges for use of an unbundled local loop in the same geographic area as more specifically described in such Conditions. The Merger Conditions state that the Surrogate Line Sharing Charges shall be 50 percent of the lowest monthly recurring charge, 50 percent of the lowest non-recurring line or service connection charge, and 100 percent of the lowest non-recurring service order charge for the unbundled local loop then effective that have been established by the state commission pursuant to Section 252(d)(1) of the Act.

Finally, Rhythms has the same ability as SBC to maximize the revenue derived from the use of a "line" by buying a UNE loop and using the data part of the spectrum to provide DSL service and the voice spectrum to provide voice telephony and related services.

Eric, in the future, we would request that you extend SWBT the courtesy of "allowing" us more than one day to respond to a letter.

Thank you for your assistance.

Sincerely,

John/cc

John T. Stankey
Vice President-Industry Markets

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[3] *See In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion and Order, CC Docket No. 98-141 (rel. October 8, 1999).

PROJECT NO. 20000

OPERATIONS SUPPORT TESTING	§	PUBLIC UTILITY COMMISSION
RELATING TO THE INVESTIGATION	§	
INTO SOUTHWESTERN BELL	§	
TELEPHONE COMPANY'S ENTRY	§	OF TEXAS
INTO THE INTERLATA	§	
TELECOMMUNICATIONS MARKET	§	
IN TEXAS	§	

COMMENTS OF NORTHPOINT COMMUNICATIONS TO THE PUBLIC UTILITY COMMISSION OF TEXAS SOUTHWESTERN BELL OPERATIONS SUPPORT SYSTEMS INTERIM REPORT

NOW COMES NorthPoint Communications ("NorthPoint") and files these comments to the Interim Report prepared by Telcordia Technologies in Project No. 20000. NorthPoint Communications has been a participant in the Operational Support Systems ("OSS") testing process, and participated on a very limited basis in the Technical Advisory Group ("TAG"). NorthPoint's primary focus as a test participant is on SWBT's OSS capabilities for Digital Subscriber Line ("DSL") based services. To that end, NorthPoint submits these comments regarding the OSS testing process.

I. SWBT's Development and Deployment of OSS Capable of Supporting Advanced Services Should Be A Vital Component of the OSS Tests

NorthPoint is a competitive local exchange carrier ("CLEC") focused exclusively on the delivery of broadband DSL to small business and residential customers. NorthPoint holds a Service Provider Certificate of Operating Authority in Texas. NorthPoint also has successfully deployed Symmetric Digital Subscriber Line ("SDSL") services in twenty four markets across the country.

In Section 4.2.2.1.3 of the Interim Report, Telcordia's description of its xDSL-testing for the

Functionality Test is misleading and should be corrected. Telcordia describes the test associated with OSS capabilities for xDSL technologies. The description is flawed in the following respects:

- The Interim Report erroneously states that DSL services are "new," and thus, "standard guidelines" do not exist. Interim Report at 4-5. However, NorthPoint has been deploying DSL-based services using SWBT unbundled network elements ("UNEs") and SWBT's OSS since February 1999. Further, the pre-ordering/pre-loop qualification processes necessary to support NorthPoint's provision of SDSL have been utilized by SWBT for many years to support SWBT's ISDN offering. Finally, claims of a lack of standards should not be used by Telcordia or the Commission as a reason to apply less than the parity standards set forth in the Act. Indeed the FCC has already clarified that an absence of standards is no excuse for failure to offer CLECs nondiscriminatory access to OSS.[1]

- SWBT's ADSL service offering is not "limited." Interim Report at § 4.2.2.1.3 Instead, SWBT itself has announced an "aggressive" roll-out of ADSL across the State, where it expects to pass over 2 million customers by the year 2000. Data CLECs, which are purchasing SWBT's unbundled loops, have no choice but to use SWBT's OSS to provision competitive DSL services. Telcordia's scrutiny of these OSS is necessary to help ensure that CLECs, like NorthPoint, are provided an opportunity to compete with SWBT to offer DSL services to.

- Telcordia could not evaluate SWBT's OSS with respect to processing SDSL, because NorthPoint is not permitted to submit SDSL orders to SWBT.[2] The orders from which NorthPoint provided data to Telcordia are nothing more than a permutation of SDSL services, using only ISDN ordering procedures. In attempting to patch together a means to provision SDSL services, NorthPoint can only order ISDN loops from SWBT. However, if ISDN loops are provisioned over fiber, the orders are canceled, as they are incompatible with SDSL services. Therefore, the Interim Report's statement that NorthPoint has submitted SDSL orders for testing is correct and must be modified.

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[1] *See, In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana,* CC Docket No. 98-121, FCC 98-271, *Memorandum Opinion and Order,* ¶ 137. (Rel. October 13, 1998), which states, in part: "...a BOC must provide nondiscrimination access to its OSS functions irrespective of the existence of, whether it complies with, industry standards."

[2] NorthPoint originally opted into the AT&T/SWBT Interconnection Agreement. This Agreement is not sufficient to support a meaningful provision of xDSL-based services on a long term basis. Because of customer demand, NorthPoint has attempted to utilize this agreement on a limited basis until it can complete negotiations or arbitration with SWBT. Until then, NorthPoint has had to use only those provisions in the agreement, which did not include any terms, conditions, or rates for xDSL technologies, and certainly no DSL-specific OSS capabilities.

II. Loop Pre-Qualification Process and Testing is Incomplete.

A. A Meaningful Loop Pre-Qualification for CLECs Does Not Currently Exist, and Therefore Cannot be Tested.

The FCC stated in its August 1998 Advanced Services Order the following:

> "Under our existing rules, incumbent LECs are also required to provide competing carriers with nondiscriminatory access to the operations support systems (OSS) functions for pre-ordering, ordering, and provisional loops. [Citation omitted]. If new entrants are to have meaningful opportunities to compete, they must be able to determine during the pre-ordering process, whether or not a loop is capable of supporting xDSL-based services. [Citation omitted]. An incumbent LEC does not meet the nondiscrimination requirement if it has the capability electronically to identify xDSL-capable loops, either on an individual basis or for a slower and more cumbersome process to obtain that information."[3]

It is critical for any test that purports to determine "OSS readiness" to consider whether the processes that are being provided to the CLECs are at parity. For DSL carriers, such as NorthPoint, the first component of the process is to obtain adequate, timely, and meaningful loop pre-qualification information that would enable a CLEC to make informed decisions *in the pre-order phase*. Loop pre-qualification information should include loop gauge, presence of bridge taps (including number, length, and approximate location), presence and number of load coils, repeaters, pair-gain devices, digital loop carriers, digital added main line devices ("DAML"), or other similar devices, and the availability of alternate copper to serve the end user. Without such information, CLEC service representatives do not know whether they can provide DSL services to potential end users. As

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3 *See*, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, *Memorandum Opinion & Order & Notice of Proposed Rulemaking* FCC 98-188, released Aug. 7, 1998, *available at* 1998 WL 458500 ("*Advanced Services Order*") at ¶56.

explained above in the August, 1998 Advanced Services Order, the FCC recognized that this information was needed during the preorder phase. The problem, however, is that NorthPoint cannot obtain this information on an electronic basis (even though SWBT representatives have electronic access to their *electronic* databases which contain this information). Furthermore, NorthPoint also cannot obtain this information through efficient manual processes. Accordingly, any conclusion that SWBT's OSS provide CLECs a meaningful opportunity to compete would be inappropriate and, indeed, false.

B. <u>The Pre-Order Monitoring Must be Re-Tested Using More Accurate Standards.</u>

Section 4.5.1.2 of the Interim Report recognized that Telcordia would have to "monitor" CLEC pre-ordering activities in the Pre-Test Phase. Telecordia also represented at the workshop that it would have to actually monitor (be present) on the CLEC-side of the pre-ordering process to determine whether the SWBT OSS functionality was adequate. NorthPoint fully supports this conclusion.

Currently, SWBT's electronic loop pre-qualification tool only offers a "red, yellow, green light indicator," which is merely an educated guess of whether DSL can be provisioned on a particular loop based on the approximate loop length. This is insufficient, and is inconsistent with the FCC's guidelines. As stated above, to reliably determine whether DSL can be provisioned on a particular loop, a CLECs must first identify loop gauge, presence of bridge taps (including number, length, and approximate location), presence and number of load coils, repeaters, pair-gain devices, digital loop carriers, DAMLs, or other similar devices. CLECs only have access to information via the manual K1023 process, which requires CLECs to wait several days to receive the response. In

contrast, SWBT has electronic access to this more detailed loop qualification information. Indeed, it appears that SWBT engineers have electronic access to SWBT databases that enable SWBT to make its own deployment decisions. Therefore, the re-test should not only evaluate how CLECs access such loop qualification information, but it should also ascertain how SWBT's engineers, service managers, support staff and/or service representatives obtain the loop qualification from the underlying electronic databases.

C. **Telcordia's Interim Conclusions Do Not Reflect NorthPoint's "Real World" Experience.**

The Interim Report contains Telcordia's apparent interim conclusions for the Provisioning capabilities of SWBT's OSS. Interim Report at §4.5.4.3. Telcordia recognized that it did not have either time or sufficient orders to make any dispositive conclusions. Telcordia then reserves its ability to make further conclusions at a later time. As a result, NorthPoint also reserves the right to comment on Telcordia's subsequent findings; particularly in light of the importance of SWBT's DSL OSS functionalities and capabilities.

Even with Telcordia's admission that it was not able to make interim evaluations or conclusions, Telcordia makes an unfounded conclusion that SWBT's process for "DSL loop validation and Business Rules associated with the LSR generation were completed by [SWBT] in *a reasonable period of time* for the CLEC to place ADSL orders." (emphasis added) NorthPoint completely disagrees and can find no basis for Telcordia's conclusion in this regard. This issue is of vital importance to the Commission's review of pre-ordering and ordering for DSL.

Telcordia's statement is flawed and should be clarified. First, Telcordia does not define

"reasonable time," therefore, it is not clear what standard Telcordia applied. Second, NorthPoint's experience in almost every instance has been that SWBT's processes associated with loop qualification are not reasonable, nor contain reasonable response times. In fact, NorthPoint's ability to provide service to its customers is often plagued with delays only because of SWBT's inadequate, lengthy, and cumbersome loop ordering process. Third, it is inappropriate, as Telcordia has done, to define/test these processes only for ADSL. Either Telcordia has lumped all xDSL technologies into ADSL (which would be incorrect), or Telcordia is only looking at SWBT's OSS capabilities for pre-ordering, ordering/provisioning, maintenance and repairs, and billing for only ADSL (which also would be erroneous). For proper review, SWBT's OSS should be tested for each form of xDSL technology, and each technology should not be categorized only under ADSL. Conversely, it would be inappropriate, and indeed misleading, if Telcordia only tested SWBT's OSS for provisioning ADSL. CLECs are not limited to their deployment of xDSL-based services by SWBT's ADSL offering. Moreover, CLECs cannot be limited in obtaining electronic real time OSS access by SWBT's limited OSS offerings. The bottom line is that Telcordia's interim statements and apparent limited view of DSL testing must be modified significantly to provide the Commission with a more accurate picture of the facilities of SWBT's OSS capabilities.

III. Conclusion

NorthPoint appreciates the opportunity to provide these comments on the Interim Report. NorthPoint's primary concerns throughout those comments is one of accuracy, as well as ensuring that the OSS testing is meaningful. The standard for any OSS testing and compliance with the § 271 checklist is parity. Today, NorthPoint does not have parity with SWBT's OSS for deploying xDSL-

based services. Telcordia's Interim Report should reflect those inadequacies, as well as ensure the Commission properly understands the limited nature of what SWBT allows DSL carriers, such as NorthPoint, to deploy. NorthPoint intends to continue as a test participant in this process to provide important experiences with SWBT in Texas. NorthPoint expects to file comments on the Final Report, as that report will contain, for the first time, Telcordia's analysis of DSL test results. NorthPoint stands ready to assist Telcordia and the Commission in the Re-Test Phase and preparation of the Final Report.

Respectfully submitted,

Dineen J. Majcher
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SMITH, MAJCHER & MUDGE, L.L.P.
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By: Katherine K. Mudge by DJM
Katherine K. Mudge
State Bar No. 14617600

ATTORNEYS FOR NORTHPOINT COMMUNICATIONS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record via hand-delivery, first-class mail, or telecopier this 2nd day of August, 1999.

Katherine K. Mudge

Katherine K. Mudge
by